

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE:  
VITAMINS ANTITRUST LITIGATION

MDL No. 1285  
Misc. No. 99-0197 (TFH)

THIS DOCUMENT RELATES TO:  
*Cargill, Inc., et al. v. F. Hoffman -LaRoche Ltd.,*  
*Civil Action No. 99-CV-5167(N.D. Ill.)*

FILED

MAR 21 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

MEMORANDUM OPINION

Re: Motion to Strike Untimely Ratifications of the Coca-Cola Company

Pending before the Court is defendants' Motion to Strike Untimely Ratifications.<sup>1</sup> The ratifications at issue were made by Coca-Cola ("Coke") on December 5, 2001 pursuant to Rule 17(a) of the Federal Rules of Civil Procedure and the Court's June 7, 2001 Order which required all non-party affiliates to file formal ratifications.<sup>2</sup> Upon careful consideration of defendants'

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<sup>1</sup> The Motion to Strike Invalid Ratifications is brought by defendants F. Hoffmann-La Roche Ltd., Hoffman-La Roche Inc., Roche Vitamins Inc., BASF AG, BASF Corporation, Aventis S.A. (f/k/a Rhone-Poulenc S.A.), Aventis Animal Nutrition S.A. (f/k/a Rhone-Poulenc Animal Nutrition S.A.), Rhone-Poulenc Inc., Hoeschst Marion Roussel S.A., Takeda Chemical Industries, Ltd., Takeda Vitamin & Food USA, Inc., Daiichi Pharmaceutical Co., Ltd., Daiichi Pharmaceutical Corporation, Daiichi Fine Chemicals, Inc., Bioproducts Incorporated, ConAgra, Inc., Degussa AG (f/k/a Degussa-Huls AG), Degussa Corporation (f/k/a Degussa-Huls Corporation), DuCoa, L.P., DCV, Inc., E.I. duPont de Nemours and Company, EM Industries, Inc., Merck KGaA, E. Merck, Lonza AG, Lonza Inc., Mitsui & Co., Ltd., Nepera Inc., Reilly Industries, Inc., Sumitomo Chemical America, Inc., Tanabe Seiyaku Co. Ltd., Tanabe U.S.A., Inc., UCB Chemicals Corporation and UCB S.A..

<sup>2</sup> Coca-Cola filed ratifications of six of its subsidiaries including: Coca-Cola de Chile, S.A. (Chile), Coca-Cola GmbH (Germany), Coca-Cola India Private Limited (f/k/a Britco Foods Company Private Ltd.) (India), P.T. Coca-Cola Indonesia (Indonesia), Refrescos Envasados, S.A. (Spain), and Coca-Cola Servicios de Venezuela, C.A. (Venezuela).

motion, plaintiffs' opposition, defendants' reply, and the entire record herein, the Court will deny defendants' motion to strike. However, the Court will deny Coke's request for fees and expenses in responding to this motion.

The Court will briefly touch on the background relating to the instant motion and incorporates by reference the background details in its February 7, 2002 Memorandum Opinion Re: Motion to Strike Invalid Ratifications. On June 28, 2001, Coke filed ratifications on behalf of 21 foreign affiliates pursuant to the Court's June 7 Order requiring affiliates file formal notices of ratification within 10 days of the order. Five months later on December 5, 2001, Coke filed six additional ratifications. Two months later on February 5, 2002, defendants filed a motion to strike the ratifications as untimely.

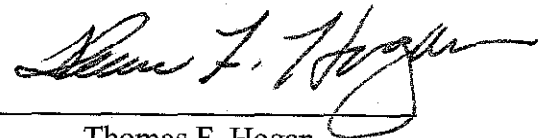
Defendants argue that the Coke ratifications should be stricken as inexcusably late and that adding the ratifications add additional claims that would cause prejudice and delay. To support the claim of prejudice, defendants point to the already-taken 30(b)(6) depositions that might have to be re-opened and the potential need for additional written discovery into the "nature of these new claims." Defendants further claim that Coke's responses to defendants' discovery requests have been totally lacking in information concerning the claims of the subsidiaries. Coke responds by claiming that "formal ratifications" are a "mere housekeeping matter" needed to insure that defendants will not be subjected to subsequent lawsuits and to insure that the Court's judgment will have the proper res judicata effect. Coke claims that there could be no surprise or prejudice to the defendants because it (1) advised defendants of the ratification of its subsidiary in India on June 28, 2001; (2) previously identified ratification its subsidiary in Chile on June 28, 2001 but identified it under the wrong corporate name; and, (3) it

only became aware of the need for ratification of claims of its subsidiaries in Germany, Spain, and Venezuela through recently produced discovery.

The Court is not convinced that allowing the ratifications would result in undue prejudice and delay. The Court is somewhat concerned with Coke's cavalier failure to address the import of the deadline set forth in the Court's June 7 Order, or more bluntly its own failure to meet that deadline, however, Coke has made some showing that it did not know of the need for the ratifications before the deadline in the June 7 Order, and that the existence of the claims of the subsidiaries only became fully known to them through discovery provided after that deadline. Therefore, the Court will allow the ratifications as filed as they were filed within a reasonable period from the time in which they became known to Coke.

In conclusion, for the foregoing reasons the defendants' motion to strike is denied. Should defendants need to serve additional, non-duplicative discovery as a result of these ratifications, they will be afforded the opportunity to do so.

March 20, 2002



Thomas F. Hogan  
Chief Judge

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ORDER

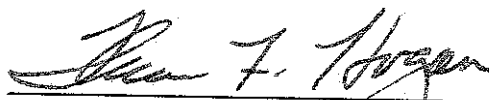
Re: Motion to Strike Untimely Ratifications of the Coca-Cola Company

It is hereby

**ORDERED** that defendants' Motion to Strike Untimely Ratifications of the Coca-Cola Company is **DENIED**.

**SO ORDERED.**

March 20, 2002

  
Thomas F. Hogan  
Chief Judge

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